

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

TONY LOCKWOOD

Plaintiff,

v.

SMITH COUNTY DISTRICT CLERK

Defendant.

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CIVIL ACTION NO. 6:18-cv-324-RWS-JDL

ORDER

The Relator Tony Lockwood, a prisoner of the Texas Department of Criminal Justice, Correctional Institutions Division proceeding *pro se*, filed this application for the writ of mandamus against the District Clerk of Smith County, Texas. Docket No. 1. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. Docket No. 2.

Lockwood sought issuance of a writ of mandamus ordering the Smith County District Clerk to transmit his habeas corpus application to the Texas Court of Criminal Appeals. *See* Docket No. 1. After review of the pleadings, the Magistrate Judge issued a Report recommending that the petition for mandamus relief be denied. *See* Docket No. 12. The Magistrate Judge determined that the federal district courts lack jurisdiction to issue writs of mandamus against state or county actors or agencies. *Id.* at 2 (citing *Moye v. Clerk, DeKalb County Superior Court*, 474 F.2d 1275, 1276 (5th Cir. 1973); *Cross v. Thaler*, 356 F. App'x 724, 2009 U.S. App. LEXIS 27745, 2009 WL 4884999 (5th Cir. December 17, 2009) (citing *Moye*) (federal court lacks the general power to issue writs of mandamus to direct state courts and their judicial officers in the performance of their duties)).

Lockwood received a copy of the Magistrate Judge's Report but filed no objections thereto; accordingly, he is not entitled to *de novo* review by the District Judge of those findings, conclusions and recommendations, and except upon grounds of plain error, he is

barred from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. 28 U.S.C § 636(b)(1)(C); *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

Nonetheless, the Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge and agrees with the Report of the Magistrate Judge. *See United States v. Raddatz*, 447 U.S. 667, 683 (1980) (“[T]he statute permits the district court to give to the magistrate’s proposed findings of fact and recommendations ‘such weight as [their] merit commands and the sound discretion of the judge warrants,’ ”) (quoting *Mathews v. Weber*, 23 U.S. 261, 275 (1976)). It is accordingly

ORDERED that the Report of the Magistrate Judge (Docket No. 12) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of mandamus is **DISMISSED WITH PREJUDICE** as to its refiling in federal court, but without prejudice to any remedies which may be available for Relator in the courts of the State of Texas. It is further

ORDERED that to the extent that a certificate of appealability may be required for appeal, in that this mandamus petition is in the nature of a habeas corpus action, such a certificate is **DENIED sua sponte**. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED**.

SIGNED this 22nd day of January, 2019.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE